

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Geographic Partitioning and Spectrum	)	WT Docket No. 96-148
Disaggregation by Commercial Mobile	)	
Radio Services Licensees	)	DOCKET FILE COPY ORIGINAL
	)	
Implementation of Section 257 of the	)	GN Docket No. 96-113
Communications Act -	)	
Elimination of Market Entry Barriers	)	

**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its reply comments on the Notice of Proposed Rulemaking<sup>1/</sup> in the above-captioned proceeding.

**INTRODUCTION**

Like the majority of commenters, AT&T wholeheartedly supports the Commission's proposal to remove restrictions on the ability of broadband PCS licensees to geographically partition and disaggregate their licenses. Expanding PCS licensees' partitioning and disaggregation rights will lower entry barriers for small businesses, facilitate the efficient use of the spectrum and provide consumers with more service options and innovative technology. As AirGate Wireless notes, if adopted, the proposals in the Notice "will create a whole wealth of new opportunity for small businesses . . . to enter the broadband PCS business and assemble different license clusters."<sup>2/</sup> Similarly, allowing disaggregation and partitioning

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<sup>1/</sup> In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers, WT Docket No. 96-148, GN Docket No. 96-113, FCC 96-287, Notice of Proposed Rulemaking (released July 15, 1996) ("Notice").

<sup>2/</sup> Comments of AirGate Wireless, L.L.C. at 2 ("AirGate Comments").

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will "strengthen the ability of existing licensees to obtain access to capital that they can use to construct and maintain their PCS networks."<sup>3/</sup>

AT&T urges the Commission to reject the calls by rural telephone companies to abandon the pro-competitive proposals set forth in the Notice. Their claims that rural carriers and their customers will be harmed if parties other than rural LECs are permitted to purchase partitioned licenses are speculative and entirely unsupported. The Commission should also decline to entertain various rural LEC proposals to provide these entities with a "right of first refusal." As the rural LECs plainly understand, mandating this right would be tantamount to retaining the status quo.

Finally, AT&T agrees with U S WEST that, while the vast majority of the Commission's proposals are pro-competitive, the construction requirements set forth in the Notice might have the unintended effect of actually inhibiting the efficient use of the spectrum and the rapid deployment of service to the public.<sup>4/</sup> As AT&T stated in its initial comments, requiring both disaggregators and disaggregatees to meet the build-out benchmarks could discourage the implementation of innovative services and technologies.<sup>5/</sup>

**I. The Commission Should Reject Rural LEC Proposals To Preclude Other Parties from Purchasing Partitioned Licenses**

Various rural LEC associations argue that removing the exclusive nature of their ability to purchase partitioned licenses will cause them grave injury and will undermine the congressional mandate to provide opportunity in the provision of PCS for such entities. The

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<sup>3/</sup> Comments of NextWave Telecom, Inc. at 2 ("NextWave Comments").

<sup>4/</sup> Comments of U S WEST, Inc. at 10-15 ("U S WEST Comments").

<sup>5/</sup> Comments of AT&T Wireless Services, Inc. at 5-7.

Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), for example, contends that broadening the partitioning provisions would "effectively exclude rural telephone companies from meaningful participation in the competitive bidding process."<sup>6/</sup> The Ad Hoc Rural Telecommunications Group adds that only rural telephone companies have the commitment to serve rural areas and, thus, customers living in remote areas would suffer if the Commission adopts its proposals.<sup>7/</sup>

These organizations provide little basis for their self-serving and speculative claims. To the extent rural telephone companies have the advantage of existing facilities and customers, they may well be the only willing buyers in many areas. As the United States Telephone Association ("USTA") states, "the Commission's proposals will in fact increase rural telcos' ability to participate in broadband PCS, by enabling them to obtain partitioned licenses outside of, or substantially larger than, their existing service area."<sup>8/</sup>

Moreover, it is not at all clear that expanding the pool of possible partitionees would prevent rural telephone companies from actually purchasing their desired licenses. Under current rules, A, B, and C block licensees are not required to partition to rural LECs. Thus, having paid fair market value for their authorizations, PCS licensees generally would choose to retain their entire service areas rather than accept a low ball offer from a rural telephone company. While the added competition might, in some cases, preclude rural carriers from

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<sup>6/</sup> Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at 3 ("OPASTCO Comments").

<sup>7/</sup> Comments of the Ad Hoc Rural Telecommunications Group at 2-3.

<sup>8/</sup> Comments of the United States Telephone Association at 4 ("USTA Comments").

getting a "deal," more than likely such a deal would not have been forthcoming under current regulations.

It also is not readily apparent how expanding partitioning rights would injure customers living in rural areas. As noted above, having more than one potential buyer in a given market increases the chances that a PCS licensee would choose to sell part of its service area to anyone. Furthermore, although rural LECs might be "natural" providers of PCS in rural areas, there is simply no basis for finding that other parties would fail to provide adequate service to such customers. For example, cellular licensees in rural service areas ("RSAs") would have a strong incentive to build-out and offer PCS service in adjacent rural markets.<sup>9/</sup>

The Commission should not adopt the "solution" to this alleged problem proffered by some rural LEC associations. These groups advocate providing rural telephone companies with a right of first refusal over any partitioned area that covers their rural service area.<sup>10/</sup> For example, USTA suggests that parties applying to the Commission for a partitioned

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<sup>9/</sup> OPASTCO's argument that partitionees in the typical rural area might ignore most of the geographic area by opting to serve the densely-populated town applies equally to rural telephone companies. OPASTCO Comments at 8. Simply because a LEC has landline facilities in a rural area does not mean that it would choose to construct immediately in "the sparse, outlying ranches" if such construction was unnecessary to meet the build-out benchmarks. Id.

<sup>10/</sup> The Rural Cellular Association ("RCA") suggests that "rural CMRS providers," as well as rural LECs, should be eligible for this treatment. Comments of the Rural Cellular Association at 2, 5 ("RCA Comments"). The original partitioning right included only landline providers and, because of the spectrum cap rule, many cellular and PCS providers would be ineligible to partition in their service areas. Moreover, RCA's proposal to define a "rural CMRS provider" as any CMRS carrier licensed to provide service in a cellular RSA would arguably encompass all MTA PCS providers. Id. at n. 5.

license would be required to notify the affected rural telephone company of the existence of their agreement.<sup>11/</sup> According to USTA, the partitioned license should only be granted upon a showing that the rural telephone company declined to exercise its right to purchase the license at the same "per-pop" price set forth in the contract.<sup>12/</sup>

Giving rural telephone companies this right would effectively preserve their exclusive partitioning authority. No other party would bargain in good faith if it knew that a rural telephone company could preclude it from consummating the transaction. Quite clearly, prospective partitionees would not waste their time negotiating deals for the advantage of other entities.

Contrary to the assertions of the rural LECs, this right of first refusal could not be "easily implemented and administered."<sup>13/</sup> Indeed it would likely be impossible for a PCS licensee to close a transaction if the proposed partitioned area encompassed more than one landline rural service area. In such case, the licensee and the prospective buyer would have to await the decisions of numerous rural LECs and then renegotiate for a possibly dissected geographic territory. It is also likely that the original buyer's interest in the agreement would have been premised on receiving a contiguous service area or a particular mix of rural and urban areas. In that event, the PCS licensee would lose the major sale and be compensated only for the per-pop price of the sparsely populated rural area or areas. This outcome is neither fair nor in the public interest.

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<sup>11/</sup> USTA Comments at 5-6.

<sup>12/</sup> Id.

<sup>13/</sup> See RCA Comments at 4. See also Comments of the National Telephone Cooperative Association at 6.

Finally, the Commission should not adopt RCA's proposal to establish a "fill-in" policy for PCS licensed areas.<sup>14/</sup> Under this proposal, even if a PCS licensee satisfied the Commission's stringent build-out requirements, it would be required to forfeit geographic areas not used at the end of the license period. These construction benchmarks provided much of the basis for the valuation of the PCS spectrum by auction participants and, presumably, if areas are unserved, licensees will have a strong incentive to recoup their investment through partitioning. This situation is not comparable to past scenarios in which cellular licensees received free authorizations, and to treat it in a similar fashion would penalize carriers that have paid the United States Treasury billions of dollars for use of the spectrum.

## **II. The Commission Should Modify the Post-Disaggregation Build-Out Requirements**

In its initial comments, AT&T proposed that the Commission permit parties selling and purchasing disaggregated spectrum to allocate privately the obligation to meet the construction requirements. This would ensure that the five and ten-year benchmarks established by the Commission were fulfilled in addition to allowing parties the flexibility to experiment with more risky and innovative ventures.

U S WEST agrees with AT&T that limiting parties to the two build-out options set forth in the Notice would have the unintended effect of "inhibiting the desired objectives of promoting efficient use of spectrum and rapid service deployment to the public."<sup>15/</sup> U S WEST notes that, under the first "impose the same construction requirements on the

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<sup>14/</sup> RCA Comments at 6-7.

<sup>15/</sup> U S WEST Comments at 10.

purchaser" option, it will be very hard to find a party willing to assume the risk of building out one-third of an entire MTA by year five. While the second option gives the buyer somewhat more leeway, there is little basis for making the public await the benefits of disaggregation until the original licensee fulfills its five-year construction requirement. This is especially the case given the Commission's expectation that the revenues from disaggregation could be used to help licensees meet these coverage requirements. As NextWave explains, "dictating in advance which party to an agreement must guarantee compliance with such things as buildout and coverage requirements will arbitrarily shrink the universe of disaggregation and partitioning opportunities, and, concomitantly, reduce the benefits those opportunities would otherwise generate."<sup>16/</sup>

Finally, AT&T reiterates its position that parties be allowed to disaggregate spectrum in blocks as small as 1 MHz. While AirGate may be correct that there are currently no viable broadband services that could be provided with only 1 MHz of spectrum,<sup>17/</sup> GTE correctly observes that the marketplace should ultimately determine the best use of the spectrum.<sup>18/</sup> Moreover, as GTE points out, "[r]equiring larger than 1 MHz blocks could foreclose entities from obtaining the spectrum necessary to provide services requiring smaller

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<sup>16/</sup> NextWave Comments at 5. AT&T agrees with NextWave and GTE Service Corporation ("GTE") that, after disaggregation or partitioning, the responsibilities of the parties should be "de-linked." NextWave Comments at 4-5; Comments of GTE Service Corporation at 9 ("GTE Comments"). Permitting the parties to allocate such responsibilities privately, however, does not necessitate that either the transferor or transferee retain accountability for the duties assumed by the other.

<sup>17/</sup> AirGate Comments at 6.

<sup>18/</sup> GTE Comments at 9.

frequency blocks or to add small blocks of spectrum to augment the spectrum they already hold in a particular market."<sup>19/</sup>

### CONCLUSION

For the foregoing reasons, AT&T supports the Commission's proposal to permit immediate spectrum disaggregation and geographic partitioning. AT&T urges the Commission to reject the requests of rural telephone companies to abandon these proposals, either directly, or indirectly through the grant to rural LECs of a "right of first refusal" over partitioning agreements. In addition, AT&T requests that parties be permitted to contract

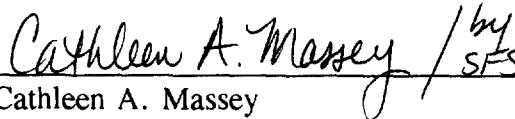
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<sup>19/</sup> Id.

privately regarding satisfaction of the construction requirements in the context of spectrum disaggregation.

Respectfully submitted,

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August 30, 1996

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I, Tanya Butler, hereby certify that on this 30th day of August, 1996, I caused a copy of the foregoing Reply Comments of AT&T Wireless Services, Inc. to be served upon the following by messenger:

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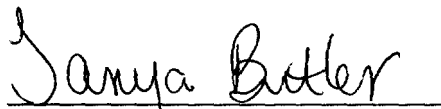
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